UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

MSP CORPORATION, a Minnesota corporation,

Plaintiff,

vs.

WESTECH INSTRUMENTS, INC., a Georgia corporation; WESTECH INSTRUMENT SERVICES LTD., a United Kingdom corporation; and WESTECH INSTRUMENT HOLDINGS, PLC, a United Kingdom corporation,

Defendants.

Civil No. 07-CV-2301 (MJD/SRN)

DECLARATION OF THOMAS LANZ

THOMAS LANZ, declares as follows:

1. I have worked in the medical and pharmaceutical testing field for 17 years. For the last eight years, I have worked specifically in the field of inhaler testing. I currently work for Copley Scientific AG. We are a distributor of impactors and other pharmaceutical testing devices and a partner company with Copley Scientific, based in the United Kingdom. I have five years of experience with Copley. I am based in Switzerland and sell impactors in Germany, France, Italy, Switzerland, and Austria.

2. Copley is the exclusive distributor of MSP's NGI device in Europe. Copley is authorized to sell the NGI device. Copley sells the NGI device to pharmaceutical companies and other firms that research and develop inhaler drug products. We are proud to distribute MSP's products and the NGI device because MSP has a sterling

reputation for quality and innovative products. We promote MSP's reputation and our status as an authorized MSP distributor.

3. Copley has made great efforts to promote, market, and sell MSP's NGI device during the last seven years. I have personally invested countless hours in promoting the NGI through product demonstrations, customer calls, exhibitions, and conferences. We have emphasized promotion of the NGI device in particular due to its superior performance.

4. Potential customers for the NGI device demand 100% accuracy in a measurement device. That is the first threshold that an impactor must meet. Inhaler testing is delicate, precise, and often expensive work with no room for measurement error. The NGI device has become widely accepted for its precision and accuracy. In particular, the NGI device enjoys a reputation for consistent, reproducible testing results, and it is now accepted as superior to other impactors in this regard. The NGI device is widely accepted by researchers and companies as accurate.

5. My customers would not even consider a device that has any deviations, inaccuracies, or unreliability. The NGI device is accepted because it has been extensively tested and ultimately endorsed by the consortium of pharmaceutical companies that hired MSP to develop it. Additionally, MSP is a well-recognized company with a reputation for quality in this field. Published tests and comparison studies have demonstrated the NGI device's reliability. I market the NGI device based on MSP's reputation and the consortium's endorsement, and, in my experience, these attributes of the NGI device are critical to our success in selling it. When we sell NGI

devices, we provide customers with documentation authenticating the device and its precise specifications because customers want the authentic NGI device that has been manufactured by MSP, tested by the consortium, and widely accepted around the world.

6. In addition to its reputation for accuracy, the NGI device is characterized by ease of use. It is a highly efficient and user friendly impactor. Due to its reputation, performance, accuracy, and efficiency, nearly every company conducting inhaler research now uses the NGI device. It has become the preeminent impactor.

7. The NGI device has several distinctive features that identify it as MSP's product. It is marketed under the "NGI" name. It also has a unique shape and appearance that looks nothing like any other impactor. The NGI could be given any number of shapes, and it would probably be cheaper to manufacture it in a simple shape like a rectangle or square. Instead, the distinctive shape of the NGI allows customers to identify it as the impactor approved by the consortium and manufactured by MSP. The impactor also has specific colors—silver on top and blue on the bottom.

8. In April of this year, I attend the Respiratory Drug Delivery exhibition in Paris. This exhibition is a premier event in the inhaler research and development field, and representatives from virtually every company involved in this field attend. It is held every other year in Europe, and a similar RDD meeting is held in the United States on alternate years. There were approximately 350 attendees this year, including representatives of pharmaceutical companies from the United States.

9. At the RDD exhibition, I saw Westech's new impactor. Westech had a table at the exhibition that included the new impactor, and my understanding is that Westech used

this high profile event to launch its new product. I was shocked when I saw Westech's impactor. It appeared to be absolutely identical in appearance to the real NGI device. Even with my extensive experience in handling and promoting the NGI device, I could not tell Westech's impactor apart from the real thing by looking at it. Westech copied every aspect of the shape and color of the NGI. They also copied numerous details like handles that do not have anything to do with product performance.

10. It is obvious to me that Westech has intentionally made its impactor appear identical to the NGI device in order to mislead customers. This is clear from its efforts to make an impactor that appears indistinguishable from the NGI device. The identity of the products can only be explained by an intent to present the Westech impactor as the NGI device approved by the consortium and proven to be reliable. Customers will not purchase an impactor unless assured of its accuracy, reliability, and broad acceptance, and Westech is using the NGI's reputation for these characteristics to sell its new device.

11. Based on the results of the RDD exhibition, Westech does, in fact, appear to be misleading customers. Multiple representatives of pharmaceutical companies at the RDD exhibition assumed that Westech was selling the real NGI device and asked me whether Westech is now an authorized distributor for MSP. That reaction confirms my fear that customers may mistakenly purchase Westech's impactor believing that it is a legitimate distributor of the real thing. Many companies around the world do not have the knowledge and experience to know which companies sell the real NGI device, exacerbating the confusion created by Westech's decision to copy its appearance.

12. If Westech designed and marketed its impactor as a competitor to the real NGI device, I doubt that customers would purchase it because it has not been tested, proven, and accepted. However, since Westech has made it very difficult for customers to know the difference, I am very concerned that customers will be confused and mistakenly purchase the Westech device.

I declare under penalty of perjury that the foregoing is true and correct.

June 06, 2007

s/ Thomas Lanz
THOMAS LANZ

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